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(Original Signature of Member)

109TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

To empower parents to protect children from increasing depictions of indecent  
material on television.

\_\_\_\_\_  
**IN THE HOUSE OF REPRESENTATIVES**

Mr. LIPINSKI (for himself and Mr. OSBORNE) introduced the following bill;  
which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To empower parents to protect children from increasing  
depictions of indecent material on television.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Family Choice Act of  
5       2006”.

6       **SEC. 2. FINDINGS.**

7       Congress finds the following:

1           (1) Subscription television services have estab-  
2           lished a pervasive presence in the lives of Americans,  
3           including American children. Over 80 percent of  
4           American households subscribe to multi-channel  
5           video programming. Approximately 58.6 percent of  
6           all households subscribe to cable television service,  
7           and approximately 23 percent subscribe to direct  
8           broadcast satellite (in this section referred to as  
9           “DBS”) service. Of those subscribing to cable serv-  
10          ice, 88 percent subscribe to expanded basic service,  
11          while just 12 percent subscribe only to basic service.  
12          Fewer than half of American households subscribing  
13          to cable have digital cable service.

14          (2) The substantial majority of American chil-  
15          dren have access to multi-channel video program-  
16          ming in their home. Approximately 74 percent of  
17          children from ages 2 through 18 live in homes with  
18          cable or DBS service, and 78 percent of children  
19          under the age of 7 live in homes with such service.  
20          Of those homes with children subscribing to cable  
21          service, the vast majority subscribe to expanded  
22          basic cable service. Approximately 20,900,000 house-  
23          holds with children subscribe to expanded basic cable  
24          service, while just 2,900,000 households with chil-  
25          dren subscribe only to basic cable service.

1           (3) American children, on average, spend a sig-  
2           nificant part of their day watching television, includ-  
3           ing cable programming. According to Nielsen Media  
4           Research, children ages 2 through 11 watch an aver-  
5           age of 3 hours and 15 minutes of television per day,  
6           and children ages 12 through 17 watch an average  
7           of 3 hours, 7 minutes of television per day. Children  
8           in homes with subscriptions to multi-channel video  
9           programming watch, on average, about 67 percent  
10          more television than children in homes with only  
11          broadcast television service.

12          (4) Many adults and most children do not dis-  
13          tinguish between broadcast channels and cable chan-  
14          nels. Rather, they view them as interchangeable and  
15          regularly switch between these types of channels.

16          (5) Children often watch television in the ab-  
17          sence of parental supervision. For example, many  
18          children watch television when they are home alone  
19          after school while their parents are still at work, and  
20          many children watch television at friends' houses  
21          when their own parents are not present. A Kaiser  
22          Family Foundation report in March 2005 found that  
23          68 percent of children ages 8 through 18 have a tel-  
24          evision set in their bedroom, and 37 percent have  
25          subscription multi-channel video service in their bed-

1 rooms. Furthermore, according to the Department  
2 of Education, 81 percent of children ages 2 through  
3 7 sometimes watch television without adult super-  
4 vision. Additionally, a 2003 Kaiser Family Founda-  
5 tion White Paper found that 91 percent of children  
6 ages 4 through 6 have turned on the television by  
7 themselves.

8 (6) Multichannel video programming distribu-  
9 tors, such as cable and DBS operators, are critical  
10 sources of video programming, such as public affairs  
11 programming, news programming and educational  
12 programming, which is not duplicated by broadcast  
13 television. Cable operators on average offer 25 chan-  
14 nels in their basic tier of programming and approxi-  
15 mately 45 additional channels in their expanded  
16 basic tier. Cable channels offering educational, infor-  
17 mational, or entertainment programming that is ap-  
18 propriate for or attractive to children are generally  
19 included on the same expanded basic tier as chan-  
20 nels offering programming that is sexually explicit.  
21 Parents are generally not given the choice of only  
22 purchasing channels that carry programming that is  
23 appropriate for children.

24 (7) Indecent programming on channels carried  
25 on extended basic cable service is pervasive. Sexually

1 explicit material is shown more than twice as often  
2 in original cable programming than in broadcast  
3 programming.

4 (8) Complaints about indecent cable program-  
5 ming have increased exponentially in recent years. In  
6 2004, the Federal Communications Commission re-  
7 ceived 700 percent more cable indecency complaints  
8 than it received in 2003.

9 (9) Parents are concerned that indecent pro-  
10 gramming is being aired on cable channels viewed by  
11 children. A Kaiser Family Foundation White Paper  
12 has found that most parents believe cable program-  
13 ming should be subject to the same indecency rules  
14 as broadcast television. In addition, during the first  
15 half of 2005, the Federal Communications Commis-  
16 sion received 10 or more complaints about alleged  
17 indecency or obscenity on 20 different cable net-  
18 works. Of these 20 cable networks, 15 rank in the  
19 top 25 cable networks watched by children ages 2  
20 through 11 during prime time, and 17 rank in the  
21 top 25 networks watched by children ages 12  
22 through 17 during prime time. Most of the cable  
23 programs about which indecency complaints have  
24 been filed with the Federal Communications Com-

1 mission aired during hours when many children are  
2 watching television.

3 (10) Because subscribers to multichannel video  
4 programming and their children often “channel-  
5 surf” to find out what is on television, they are sus-  
6 ceptible to unexpected exposure to unwanted con-  
7 tent. Cable subscribers on average use their remote  
8 control to sample more channels before choosing a  
9 program than do those viewers who only receive  
10 over-the-air broadcasting, thus making cable sub-  
11 scribers more susceptible to being confronted by un-  
12 wanted material. According to a study conducted in  
13 2002 by the Cable Television Administration & Mar-  
14 keting Society, over 60 percent of cable subscribers  
15 use their remote controls to “channel-surf,” that is,  
16 to find out what is on television. Moreover, approxi-  
17 mately 75 percent of children of ages 4 through 6  
18 have changed channels using a remote control ac-  
19 cording to a 2003 Kaiser Family Foundation White  
20 Paper.

21 (11) The “v-chip” does not effectively protect  
22 children from indecent programming carried by mul-  
23 tichannel video programming distributors. According  
24 to a 2004 Survey by Knowledge Networks SRI, most  
25 of the television sets currently in use in the United

1 States are not equipped with a v-chip, and of the  
2 280,000,000 sets currently in United States house-  
3 holds, approximately 161,000,000 are not equipped  
4 with a v-chip. Households that have a television set  
5 with a v-chip are also likely to have 1 or more sets  
6 that are not equipped with a v-chip, as found in a  
7 2005 Broadcasting & Cable TVFAX article.

8 (12) The ability to block channels pursuant to  
9 sections 624(d)(2) and 640 of the Communications  
10 Act of 1934 (47 U.S.C. 624(d)(2); 640) does not ef-  
11 fectively protect children from indecent program-  
12 ming carried by multichannel video programming  
13 distributors.

14 (13) A host of practical obstacles, including  
15 long waits and blocking failures, currently frustrate  
16 parents who attempt to rely on such options. This  
17 is especially true for those cable subscribers who do  
18 not have digital cable service.

19 (14) Because of the manner in which multi-  
20 channel video programming distributors currently  
21 bundle channels, most multichannel video program-  
22 ming subscribers currently receive and pay for nu-  
23 merous channels that they do not watch. According  
24 to Nielsen Media Research, for example, households

1 receiving more than 70 networks only watch, on av-  
2 erage, about 17 of these networks.

3 (15) While multichannel video programming  
4 distributors currently provide subscribers with a va-  
5 riety of methods of blocking the audio and video pro-  
6 gramming of any channel that they do not wish to  
7 receive, such distributors generally do not offer the  
8 subscriber a credit on account of such blocked chan-  
9 nel. Thus, subscribers must pay for channels in-  
10 cluded in programming tiers even if they are blocked  
11 at the request of the subscriber.

12 (16) For those adults seeking to view program-  
13 ming for mature audiences, there are many sources  
14 of such programming on premium tiers currently of-  
15 fered by multichannel video programming distribu-  
16 tors. HBO and Showtime, for example, are offered  
17 by the vast majority of cable and DBS services, and  
18 both programmers carry content that is more sexu-  
19 ally explicit than what is available on broadcast  
20 channels. At least 98 percent of all cable systems  
21 offer premium channels and 42 percent of television  
22 households subscribe to 1 or more premium chan-  
23 nels.

24 (17) Parents need more effective ways to limit  
25 the exposure of children to television with harmful

1 content by being able to purchase cable program-  
2 ming that only contains programming that is child-  
3 friendly.

4 (18) The efforts to limit the exposure of chil-  
5 dren to harmful television content have not been  
6 successful because Federal regulatory agencies have  
7 not had the authority to require cable and satellite  
8 providers to offer programming that only contains  
9 programming that is child-friendly. Therefore, legis-  
10 lation is necessary to give Federal regulatory agen-  
11 cies the authority to combat this problem.

12 **SEC. 3. DEFINITIONS.**

13 Section 602 of the Communications Act of 1934 (47  
14 U.S.C. 522) is amended—

15 (1) by striking “For purposes of this title—”  
16 and inserting the following:

17 “(a) IN GENERAL.—For purposes of this title—”;  
18 and

19 (2) by adding at the end the following:

20 “(b) ADDITIONAL DEFINITIONS.—In this title, the  
21 following definitions shall apply:

22 “(1) EXPANDED BASIC TIER.—The term ‘ex-  
23 panded basic tier’—

24 “(A) means the tier of channels offered by  
25 a multichannel video programming distributor

1 that is most frequently subscribed to by the  
2 subscribers of such distributor other than the  
3 basic service tier; and

4 “(B) includes channels offered in such  
5 basic service tier.

6 “(2) FAMILY TIER OF PROGRAMMING.—

7 “(A) IN GENERAL.—The term ‘family tier  
8 of programming’ means a tier of channels of-  
9 fered by a multichannel video programming dis-  
10 tributor that—

11 “(i) includes all channels offered on  
12 the expanded basic tier of such distributor;  
13 and

14 “(ii) does not include those channels  
15 offered on such expanded basic tier that  
16 carry programs that are rated TV-14 or  
17 TV-MA under the TV Parental Guidelines,  
18 as such ratings were approved by the Com-  
19 mission in implementation of section 551  
20 of the Telecommunications Act of 1996,  
21 Video Programming Ratings, Report and  
22 Order, CS Docket No. 97-55, 13 F.C.C.  
23 Rcd. 8232 (1998)), between the hours of 6  
24 a.m. and 10 p.m., except to the extent that

1           such programs are news programs or live  
2           sporting events.

3           “(B) AUTHORITY OF COMMISSION TO MOD-  
4           IFY DEFINITION.—The Commission, by rule,  
5           may modify the definition in subparagraph  
6           (A)—

7                   “(i) if the TV Parental Guidelines de-  
8                   scribed in subparagraph (A) are modified;  
9                   or

10                   “(ii) to better effectuate the purpose  
11                   of this Act, including to protect children  
12                   from indecent and profane video program-  
13                   ming.

14           “(3) LIVE SPORTING EVENT.—The term ‘live  
15           sporting event’ does not include—

16                   “(A) a scripted event; or

17                   “(B) any event where the outcome of such  
18                   event is determined before such event occurs.

19           “(4) MULTICHANNEL VIDEO PROGRAMMING  
20           SERVICE.—The term ‘multichannel video program-  
21           ming service’ means any video programming service  
22           provided by a multichannel video programming dis-  
23           tributor.

24           “(5) THEMED TIER OF CHANNELS.—The term  
25           ‘themed tier of channels’ means a tier of channels—

1           “(A) in which each channel in such tier of-  
2           fers programming in the same genre, such as a  
3           package of sports channels or premium movie  
4           channels; and

5           “(B) that are offered by a multichannel  
6           video programming distributor for subscription  
7           separately from other channels or tiers of chan-  
8           nels.”.

9   **SEC. 4. PROTECTING CHILDREN FROM INDECENT VIDEO**  
10           **PROGRAMMING.**

11       Part IV of title VI of the Communications Act of  
12   1934 (47 U.S.C. 551 et seq.) is amended by adding at  
13   the end the following:

14   **“SEC. 642. PROVISION OF PROGRAMMING SUITABLE FOR**  
15           **CHILDREN BY MULTICHANNEL VIDEO PRO-**  
16           **GRAMMING DISTRIBUTORS.**

17       “(a) RULEMAKING.—

18           “(1) IN GENERAL.—Not later than 270 days  
19       after the date of enactment of this section, the Com-  
20       mission shall initiate and conclude a rulemaking to  
21       adopt measures to protect children from indecent  
22       video programming carried by a multichannel video  
23       programming distributor.

24       “(2) REQUIRED CONTENT.—

1           “(A) OBLIGATIONS OF MVPD’S.—Any rule  
2           adopted under paragraph (1) shall require a  
3           multichannel video programming distributor to  
4           either—

5                   “(i) not transmit any material that is  
6                   indecent or profane on any channel in the  
7                   expanded basic tier of such distributor be-  
8                   tween the hours of 6 a.m. and 10 p.m., in  
9                   accordance with the indecency and pro-  
10                  fanity policies and standards applied by  
11                  the Commission to broadcasters, as such  
12                  policies and standards are modified from  
13                  time to time, including during any hours  
14                  that indecent material is not allowed to be  
15                  broadcast by such broadcasters;

16                  “(ii) fully scramble or otherwise fully  
17                  block, without charge, the audio and video  
18                  programming on any channel that a sub-  
19                  scriber does not wish to receive, except  
20                  that such distributor—

21                   “(I) may not block—

22                           “(aa) a channel required to  
23                           be on the basic tier of such dis-  
24                           tributor pursuant to section  
25                           623(b)(7)(A); or

1 “(bb) any equivalent channel  
2 on a direct broadcast satellite  
3 service or other type of multi-  
4 channel video programming serv-  
5 ice; and

6 “(II) may not be required to  
7 block—

8 “(aa) video programming of-  
9 fered on a per-channel or per-  
10 program basis; or

11 “(bb) video programming on  
12 a themed tier of channels, unless  
13 a subscriber does not subscribe to  
14 such channel, program, or tier; or

15 “(iii) allow a subscriber to subscribe  
16 to a family tier of programming.

17 “(B) ELECTION OF MVPD’S.—Any rule  
18 adopted under paragraph (1) shall—

19 “(i) require a multichannel video pro-  
20 gramming distributor to notify, on an an-  
21 nual basis—

22 “(I) the Commission as to which  
23 option described in clauses (i) through  
24 (iii) of subparagraph (A) such dis-  
25 tributor elects to follow; and

1 “(II) in writing, the subscribers  
2 of such distributor as to which option  
3 described in clauses (i) through (iii) of  
4 subparagraph (A) such distributor  
5 elects to follow;

6 “(ii) allow, on an annual basis, each  
7 multichannel video programming dis-  
8 tributor to change the election made by  
9 such distributor under clause (i).

10 “(C) SCRAMBLING OPTIONS.—

11 “(i) IN GENERAL.—Any rule adopted  
12 under paragraph (1) shall require each  
13 multichannel video programming dis-  
14 tributor that elects to follow the option de-  
15 scribed in subparagraph (A)(ii) to—

16 “(I) give any subscriber who  
17 elects to block any channel included in  
18 any service tier to which such sub-  
19 scriber subscribes a credit on the  
20 monthly bill of such subscriber for  
21 such blocked channel in an amount  
22 equal to the amount that such dis-  
23 tributor pays for the right to provide  
24 such blocked channel to such sub-

1 subscriber, calculated in accordance with  
2 clause (ii); and

3 “(II) provide, at least on an an-  
4 nual basis, to each subscriber com-  
5 prehensive written information con-  
6 cerning the amount of any credit that  
7 such subscriber would receive under  
8 subclause (I), if such subscriber elect-  
9 ed to exercise such subscriber’s right  
10 to block a particular channel included  
11 in any service tier to which such sub-  
12 scriber subscribes.

13 “(ii) CALCULATION OF CREDIT.—The  
14 credit described in clause (i)(I) shall be  
15 calculated as follows:

16 “(I) If a multichannel video pro-  
17 gramming distributor pays a fee per  
18 subscriber for the right to provide a  
19 channel to the subscribers of such dis-  
20 tributor, then the amount of such  
21 credit shall be equal to the amount of  
22 such per subscriber fee.

23 “(II) If a multichannel video pro-  
24 gramming distributor pays a fixed  
25 amount for the right to provide a

1 channel to all or a specified number of  
2 subscribers of such distributor, then  
3 the amount of such credit shall be  
4 equal to an allocable share of such  
5 fixed amount.

6 “(III) If a multichannel video  
7 programming distributor does not pay  
8 for the right to provide a channel to  
9 the subscribers of such distributor,  
10 then a subscriber shall not be entitled  
11 to receive a credit under clause (i)(I).

12 “(D) FAMILY TIER OPTIONS.—Any rule  
13 adopted under paragraph (1) shall require each  
14 multichannel video programming distributor  
15 that elects to follow the option described in sub-  
16 paragraph (A)(iii) to allow a subscriber to the  
17 digital service offered by such distributor to ob-  
18 tain the family tier of programming for 1 or  
19 more of the video reception devices of such sub-  
20 scriber, while at the same time obtaining other  
21 service tiers for other video reception devices of  
22 such subscriber.

23 “(b) SEVERABILITY.—If any provision of this section,  
24 or the application thereof to any person or circumstance,

1 is held to be unlawful, the remaining portions of this sec-  
2 tion not deemed unlawful shall—  
3 “(1) not be affected thereby; and  
4 “(2) remain in effect to the fullest extent per-  
5 mitted by law.”.